Docket No.: 71603-8013.US01
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Pujare et al.

Application No.: 09/826,607   Confirmation No.: 4038

Filed: April 5, 2001   Art Unit: 2143

For: CONVENTIONALLY CODED   Examiner: K. H. Shin
     APPLICATION CONVERSION
     SYSTEM FOR STREAMED DELIVERY
     AND EXECUTION
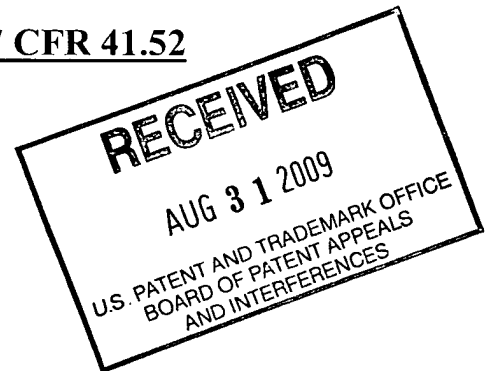
REQUEST FOR REHEARING UNDER 37 CFR 41.52

Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1.   REQUEST FOR REHEARING

Appellant hereby requests Rehearing of the Decision of the Board, issued on

June 24, 2009. This request is not filed in response to a new ground of rejection

entered in the Board's decision, and therefore the appellants do not waive rights to

further prosecution before the examiner.

2.   TABLE OF CONTENTS

3.   TABLE OF AUTHORITIES

The problems with the Examiner's rejections and the Decision of the Board

are that the conclusions are logically impossible. No authority is believed to be

needed.

4.   ARGUMENT

a.   Issue 2

On page 11, lines 1-13 of the Board's opinion, the Board states that given an

aforementioned claim construction [on page 10, lines 19-25 of the Board's opinion

that "conventionally coded application" includes any application that is coded

using any conventional technique or language], "Eylon teaches a conventionally

coded application that is converted to a streaming application when it is divided

(i.e., converted) into small segments called streamlets." The point misapprehended

was made to the Board in page 10, lines 11-13 of the Appellant's Brief on Appeal.

The response is that "conventionally coded" is not only the term used in the claims

to refer to an application that is not stream-enabled, but it is also impossible for the

"conventionally coded" application to be stream-enabled given the claim language. That is, given the context of the claims, if the term "conventionally coded" were given such broad meaning as to include any application, it would not matter since the claims include language that the conventionally coded application is converted from a non-streamable form to a stream-enabled form. Eylon actually describes systems that "require a reasonable degree of processing" as implicitly undesirable prior art. For example, in Col. 3, ll. 32-38 of Eylon, Eylon discloses difficulties with conversion from an application that is not stream-enabled to an application that is stream-enabled in the Background section: "Although effective, the stub-code substitution technique used in the 'Streaming Modules' system may require a reasonable degree of processing to prepare a given application for streaming." While the appellants' claims include processing to prepare a given application for streaming, Eylon implies that their technique includes streamlets, making the "reasonable degree of processing" unnecessary. It is not clear to the appellants what Eylon specifically does to stream-enable an application because there is no description of the process, and neither the Examiner nor the Board have provided any reasonable citation to address this deficiency.

The appellant's claim 1, which is used here as an illustrative claim, includes the language: "1) providing installation monitoring means for monitoring an

installation process of said [first] application program on a local computer system; 2) wherein said installation monitoring means gathers modification information including system registry modifications that said installation process makes to certain file paths in a system registry of said local computer system." (Reference numerals added.) The appellants wish to prevent the "conventionally coded" language from distracting from the claim language as a whole in this requested Rehearing. Therefore, for illustrative purposes, "conventionally coded" has been replaced with "[first]," which broadly includes any application, rather than as broad as was intended (i.e., "conventionally coded" was intended to mean not stream-enabled).

In element 1, the claim requires an installation monitoring means that is explicitly for monitoring the installation of the first application.

In element 2, the claim requires that the installation monitoring means gather modification information including system registry modifications that the installation of the program makes to certain file paths in a system registry of a local computer system. Even though the first application broadly includes any application, element 2 makes it impossible for the first application to be a stream-enabled application because storing, e.g., Eylon's streamlets on the local computer

system do not result in system registry modifications. Indeed, Eylon could not make an application appear to be installed if it also had to make registry modifications to install streamlets as the streamlets are received at a streaming client. Simply put, making an application appear to be installed requires that the registry modifications be made in advance of executing a stream-enabled application.

Therefore, the claims require that the claimed conventionally-coded application be an application that is not stream-enabled even if the Board construes "conventionally coded" as having no limiting effect at all.

b.   Issue 3

On page 12, lines 6-10 of the Board's opinion, the Board states that "the 'local computer system' recited in the body of the claims 1 and 40 could be any computer system and did not have to be the same computer system as either the client or the server recited in the preamble of the claims." The point misapprehended was made to the Board in the Oral Hearing. The response is the "local computer system" could be any computer system because it converts a conventionally coded application into a stream-enabled application; once the application is stream-enabled, it can be streamed from any streaming provider to

any streaming client. However, it makes absolutely no sense to say that the local computer system onto which a conventionally coded application is installed for the purpose of stream-enabling the application could be used as a streaming client for the very same application and the very same installation. The application *MUST* be stream-enabled to stream it in the first place. Through the lens of objective logic, the Board has concluded that claim 1 is directed to streaming a stream-enabled application to a client, where the stream-enabled application is then stream-enabled. The appellants respectfully believe that this construction is objectively and logically incorrect.

On page 12, line 11-page 14, line 3 of the Board's opinion, the Board finds [from the language at col. 8, ll. 14-19 of Eylon: "[a]ccording to one aspect of the invention, a virtual file system ("VFS") 160 is provided to store and organize received program streamlets and present an appearance to the operating system 140 that all of the application files are locally present. The VFS resides on a local storage device, such as the client's hard drive. Some or all of the VFS 160 can alternatively be retained in system memory."] that the application streamlets stored in the VFS 160 of Eylon "are part of a conventionally coded application that is at least temporarily 'installed' (i.e., stored) on Eylon's computer system." The point misapprehended was made on page 10, lines 11-13 of the Brief on Appeal. The

response is that Eylon disagrees with the Board's description of Eylon. In col. 3, ll. 50-56 of Eylon: "The application ***does not need to be installed on the Client PC***. ***Instead***, the application is streamed to the client's system in streamlets or blocks which are stored in a persistent client-side cache and the system is configured such that the application can begin to execute on the client machine after only a small fraction of the application is loaded." (Emphasis added.) The appellants respectfully assert that a reasonable interpretation of this language is that ***instead of installing***, streamlets are stored in a persistent client-side cache such that the application can begin to execute on the client machine without installation. An unreasonable interpretation of this language is that ***instead of installing***, the application is (at least partially) installed. Yet, this is the logical conclusion at page 13 of the Board's opinion: "we broadly but reasonably construe an application as being 'installed' if it is stored for execution in a computer system in any manner, even if the application is only stored for execution of one application code portion at a time (e.g., as application 'streamlets' that are downloaded and temporarily installed for execution in a dynamic fashion as required)." The appellants note that at col. 4, ll. 1-5, Eylon properly uses the term "install" with reference to the streaming control modules of the VFS: "A set of streaming control modules are ***installed*** on the client system and include an intelligent caching

system which is configured as a sparsely populated virtual file system ("VFS")

which is accessed via a dedicated streaming file system ("FSD") driver."

(Emphasis added.)

On page 1, line 30 of the appellant's specification, the appellants disclose in

the Description of the Prior Art, "The consumer *installs* the program from a floppy

disk..." (Emphasis added.) On page 10, lines 15-17 of the appellant's

specification, the appellants disclose in the Detailed Description of the Invention:

"From the point of view of the client system, the [stream-enabled] application

appears to be installed locally on the client even though it was initially installed on

a different computer system." (Emphasis added.) Referring once again to Eylon;

like the appellants, at col. 5, ll. 54-61, Eylon describes streamed applications as

applications that appear to be installed locally: "Rather than delivering an entire

application prior to execution, the server delivers information about the application

files and preferably a small portion of the application itself. In particular, the client

receives a file structure specification which defines how files associated with the

application and required for the application to operate *appear* to a computer *when*

the application is locally installed." (Emphasis added.)

Issue 4

On page 14, lines 13-25 of the Board's opinion, the Board concludes,
without support other than the Examiner's largely conclusory statements on pages
13-15 of the Answer, that since Eylon teaches or suggests monitoring means,
Eylon also teaches parameterizing system registry modifications by replacing
certain of said file paths in the system registry modifications with parameters that
are recognizable by a client to re-direct requests for reading the system registry.
The point misapprehended was made to the Board on page 12, line 21 to page 13,
line 5 of the Brief on Appeal.   The response is Eylon does not monitor the
installation of an application for the purpose of parameterizing system registry
modifications since that would mean that the application would not initially appear
to be installed.   If the streamlets change the appearance of the installation, then
what is the point in making the application appear to be installed in the first place?
On col. 4, ll. 5-7, Eylon clarifies that this is not optional: "The VFS *will* appear to
the operating system to be a local drive which contains the entire application."
(Emphasis added.)   So the Board's conclusion is unsupportable with the cited
reference.

Applicant believes no fee is due with this response. However, if a fee is due,

please charge our Deposit Account No. 50-2207, under Order No. 30126-

8013.US01 from which the undersigned is authorized to draw.

Dated: August 24, 2009   Respectfully submitted,

By_____

William F. Ahmann

   Registration No.: 52,548

PERKINS COIE LLP

Tel. No.: (650) 838-4300   P.O. Box 1208

Fax No.: (650) 838-4350   Seattle, Washington 98111-1208

E-mail: wahmann@perkinscoie.com   Attorney for Appellant

Application No. (if known): 09/826,607

Attorney Docket No.: 30126-8013.US01

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

on _____August 24, 2009_____ .
Date

RECEIVED
AUG 3 1 2009
U.S PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES
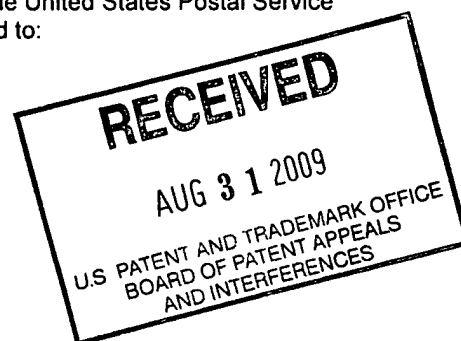
_____
Signature

_____William F. Ahmann_____
Typed or printed name of person signing Certificate

_____52,548_____   _____(650) 838-4300_____
Registration Number, if applicable   Telephone Number

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Request For Rehearing Under 37 CFR 41.52 (10 pages)

Postcard